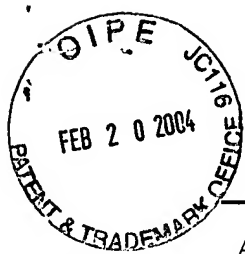


2857



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/008,792  
Filed: November 13, 2001  
Inventors:  
Geoffrey Schmit, Brent Schwan,  
Jonathan Brumley, Thomas A.  
Makowski and Christopher T. Bartz

Title: MEASUREMENT SYSTEM  
SOFTWARE ARCHITECTURE  
FOR EASILY CREATING  
HIGH-PERFORMANCE  
MEASUREMENT  
APPLICATIONS

Examiner: Wachsman, Hal D.  
Group/Art Unit: 2857  
Atty. Dkt. No: 5150-52901

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, Alexandria, VA 22313-1450, on the date indicated below.

Robert C. Kowert

Name of Registered Representative

*[Signature]*

Signature

2/17/2004

Date

PETITION UNDER 37 CFR 1.144

RECEIVED

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

FEB 26 2004

Dear Sir:

This paper is submitted as a petition under 37 CFR 1.144 from the restriction requirement made final in the Office Action dated November 19, 2003.

In the Office Action dated June 26, 2003, the Examiner presented a restriction requirement requiring election of one of twelve enumerated species. Applicant subsequently elected the first species with traverse and presented reasons for traversal in the response of July 28, 2003. In the Office Action dated November 19, 2003, the Examiner acknowledged Applicant's timely traversal; however, the Examiner made the restriction requirement final. Applicant hereby petitions for withdrawal of the restriction requirement for at least the following reasons.

The Examiner's restriction requirement is improper because the alleged species enumerated by the Examiner are not disclosed as species in the present application. By definition, species must have mutually exclusive characteristics. See M.P.E.P. §

806.04(f). The Examiner seems to have misinterpreted this requirement as meaning that claims are directed toward different species if one claim includes a limitation not expressly recited in the other claim. *See* p. 2 of Office Action of November 19, 2003. However, as noted in M.P.E.P. § 806.04(e): “*Claims are never species.*” Instead, a species is an embodiment of the invention disclosed in the specification. According to M.P.E.P. § 806.04(f):

The general test as to when claims are restricted, respectively, to different species is that fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species. (emphasis added).

Note that “mutually exclusive characteristics” is a requirement of the species as described in the disclosure. “Mutually exclusive characteristics” does not mean that one claim recites a limitation not expressly recited in another claim.

The twelve alleged species enumerated by the Examiner are not described in the specification as having mutually exclusive characteristics. For example, the Examiner has asserted that claims 2 and 6 refer to different species. However, Applicant’s disclosure clearly describes an embodiment that may include the run-time builder as recited in claim 2, and that may also store the generated measurement task specification in memory as recited in claim 6. *See, e.g.*, specification, p. 4, lines 10-25 and p. 24, lines 21-29. Therefore, claims 2 and 6 plainly do not refer to different species. The same portions of the disclosure cited above also clearly describe that the limitations of claims 6 and 7 may be included within the same embodiment. As another example, the limitation that the measurement task specifier comprises an API obviously does not exclude a computer-based measurement system as recited in claim 16. It is clear from even a cursory reading of Applicant’s disclosure that the claim groups enumerated by the Examiner do not define species having mutually exclusive characteristics under Applicant’s disclosure. Thus, the restriction requirement is improper.



### CONCLUSION

In light of the above remarks, Applicant requests that the restriction requirement be withdrawn.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicants hereby petition for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-52901/RCK.

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**FEB 26 2004**

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☒ Response to Office Action of November 19, 2003
- ☒ Information Disclosure Statement

Respectfully submitted,

Robert C. Kowert

Reg. No. 39,255

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Phone: (512) 853-8850

Date: 2/18/2004